

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
SOUTHEASTERN DIVISION**

JUDITH WELLS,

Plaintiff,

vs.

**MICHAEL J. ASTRUE,
Commissioner of Social Security,**

Defendant.

Case No. 1:07CV46MLM

ORDER

Before the court is the Motion to Dismiss filed on May 14, 2007, by Defendant. Doc. 9. The parties have consented to the jurisdiction of the undersigned United States Magistrate Judge pursuant to 28 U.S.C. § 636(c)(1). Doc. 10.

In support of the Motion to Dismiss Defendant asserts that on January 12, 2007, the Appeals Council of the Social Security Administration declined to review the decision of the administrative law judge (“ALJ”) denying Plaintiff Social Security disability benefits; that Plaintiff had sixty days from the date the Appeals Council mailed its decision to file a civil action; that Plaintiff filed the Complaint in the matter under consideration on March 21, 2007; and that, therefore, Plaintiff’s Complaint is untimely. The Notice of Appeals Council Action sent to Plaintiff informed her of the right to file a civil action and stated that she had “60 days to file” such an action. Def. Ex. 2.

In her Complaint seeking review of the decision of the ALJ Plaintiff alleges, in pertinent part, that: (1) she was notified by letter, dated January 12, 2007, from the Appeal’s Council that her application for Social Security disability benefits had been finally denied, and (2) her action in this

court was commenced within the time provided by law. Plaintiff has failed to file a timely response to Defendant's Motion to Dismiss.

20 C.F.R. § 404.981 provides:

The Appeals Council may deny a party's request for review or it may decide to review a case and make a decision. The Appeals Council's decision, or the decision of the administrative law judge if the request for review is denied, is binding unless you or another party file an action in Federal district court, or the decision is revised. You may file an action in a Federal district court within 60 days after the date you receive notice of the Appeals Council's action.

Plaintiff filed the Complaint in excess of the sixty days provided by § 404.981. The court finds, therefore, that the Complaint is untimely and that Defendant's Motion to Dismiss should be granted.

Accordingly,

IT IS HEREBY ORDERED that the Motion to Dismiss filed by Defendant Michael J. Astrue, the Commissioner of Social Security, is **GRANTED**. Doc. 9.

/s/Mary Ann L. Medler
MARY ANN L. MEDLER
UNITED STATES MAGISTRATE JUDGE

Dated this 4th day of June, 2007.